

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)	:	Dwight D. Smith
Application No.	:	10/757,146
Filed	:	01/14/2004
Title	:	APPARATUS FOR RETENTION OF BATTERY IN CHARGER
Group/Art Unit	:	2838
Examiner	:	Johali A. Torres Ruiz
Docket No.	:	18133

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Commissioner for Patents  
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Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicant requests review of the Final Rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

Review is requested for the reasons stated on the attached four (4) sheets.

**Remarks**

This is a request for review of an application presently under final rejection which was originally filed on January 14, 2004. Claims 1 and 10-12 are presently rejected; claims 13 and 15-23 are allowed and claims 3-9 are objected to.

A brief history of this application shows that this application has been under final rejection once before, however arguments made in a Response after Final Rejection dated December 21, 2007 were persuasive, and the Examiner withdrew the Final Rejection and issued a new ground of rejection, in a new non-final Office Action dated July 28, 2008.

The Examiner then rejected claims 1 and 10 under 35 U.S.C. § 103(a) as being obvious over Lee (U.S. Patent 5,844,401) in combination with Wulff, et al. (U.S. Patent 7,299,373). The Examiner objected to claims 3-9 and 14-21. Applicants responded on October 23, 2008 and amended claims 1 and 13. In claim 1, Applicants revised claim 1 to require the underlined language as follows:

a gripping member operatively connected to said cam assembly, and movable transversely into and out of said housing opening by operation of said cam assembly, between a locked and unlocked position, the gripping member being forced transversely into the battery in the locked position for frictionally gripping a battery placed within said cavity.

As for claim 13, Applicants added the objected to claim 14 into the body of claim 13.

The examiner replied on February 4, 2009 finally rejecting claims 1 and 10-12, allowing claims 13 and 15-23 and objecting to claims 3-9. Applicants filed a response After Final, but the Examiner maintained her position.

Applicants argued that the Examiner has mischaracterized the teachings of Lee, U.S. Patent No. 5,844,401. Lee shows a charging device as shown in Figures 3A and 3B, which may receive a battery 5 in order to charge the battery. The battery charging unit includes a locking member 7 which operates under the influence of a spring 8. The locking member 7 pivots about

a point between the positions shown in Figures 3A and 3B. The battery charger includes a sliding part 6 having a projection 62 which is received in a projection groove 72 such that when the sliding part 6 is moved in the direction of the arrow (Figure 3B), the "projection groove 72 of locking member 7 makes contact with and cams with projection 62 of sliding part 6." This causes the locking member to rotate to the open position shown in Figure 3B. (Column 3, lines 50-51).

As noted by the Examiner, Lee does not cam the locking member into position. Rather, the locking member 7 is spring loaded from the position shown in Figure 3B to the position shown in Figure 3A where a locking projection 71 is received in a locking groove 51 of the battery.

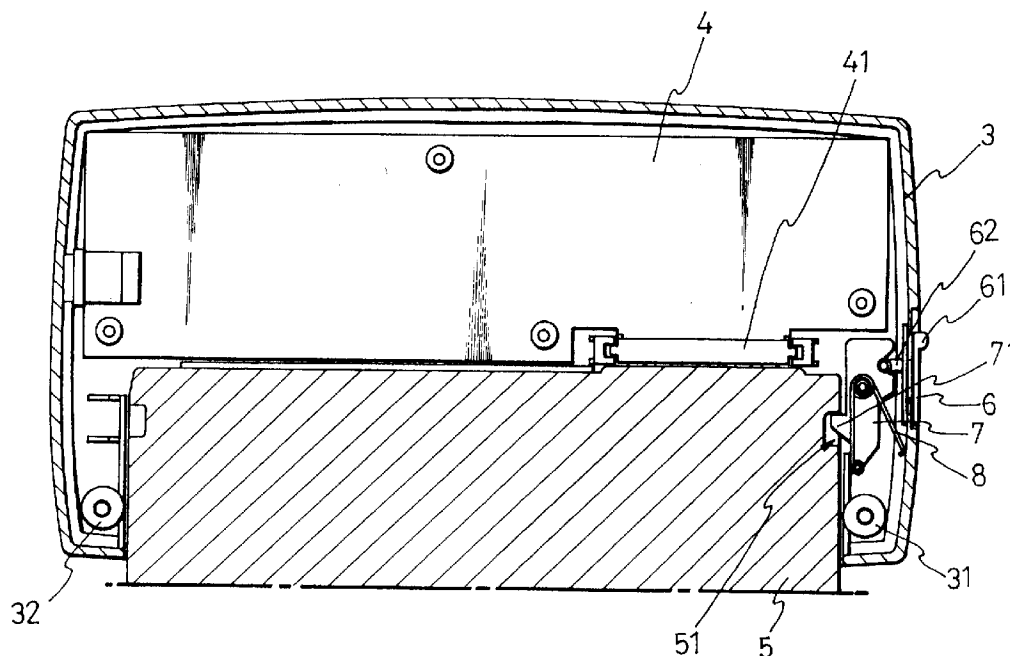
Due to this shortcoming, the Examiner has found a reference Wulff, which shows a first unit 12 having a battery housing 14 having a multi-stage release assembly for detaching battery 10 in a controlled manner. The first catch and latch mechanism includes a pair of buttons 20 which are made from the same material as the housing and further include a flex spring sheet mechanism (not shown) which is attached to an interior of the battery housing. The flex spring sheet mechanism is intended to engage a projection on the battery. The specification quoted by the Examiner is that the "buttons 20 can also include cams or wheels rotating on a shaft, at their ends that can deflect the flex spring sheet causing the release or engagement of the projection on the battery unit 10". Unfortunately, Wulff shows none of these.

In the present disclosure, Applicants do not require or utilize projections on the battery housing or the device itself for retention within the battery charger. Rather, the gripping member itself is moved transversely into the battery receiving area or opening and a gripping member is cammed into place and is frictionally held by the friction member 102. Applicants believe that a combination of Lee and Wulff would not suggest a cam for moving a gripping member into frictional engagement as claimed.

In response to this argument, the Examiner indicates that Applicants cannot argue references independently, when the rejection is based upon a combination. However, Applicants then pointed out that even if Lee and Wulff were combinable, the combination does not teach the claimed invention of claim 1. The examiner's response in the Advisory Action (Page 2) was that "when gripping member (71) is in contact with battery element (51) there is a resistance of motion that grips the battery in place caused by the friction in both elements."

Applicants again believe that this is not just a mischaracterization of the Lee reference, but also of the very mechanics by which Lee operates. Lee's latch may have a retaining force caused by abutting latches, but it does not have a frictional retaining force as suggested by the Examiner. Lee's latch is shown below by way of locking projection 71 being positioned within locking groove 51. Lee himself indicates in Column 4, lines 10-12 that "[t]he battery is fixed to the charging device by engaging the locking projection 71 and the locking groove 51."

**FIG. 3A**



As the Examiner has failed to show a reference or a combination of references showing a gripping member moving transversely into the housing opening and a gripping member for frictionally gripping a battery placed within the cavity, Applicants believe that claim 1 is patentably distinct from the combination of Lee and Wulff. As neither Lee nor Wulff shows such a structure, this rejection should be overturned.

This review should not turn on a question of obviousness; rather the question at hand is simply whether the Lee reference can be used for teaching a gripping member operatively connected to a cam assembly, which is movable transversely into and out of the housing opening by operation of the cam assembly, between a locked and unlocked position, where the gripping member is forced transversely into the battery in the locked position for frictionally gripping a battery placed within said cavity.

If necessary to affect a timely response, please consider this paper a request for an extension of time, and charge any shortages in fees, or apply any overpayment credits, to Baker & Daniels' Deposit Account No. 02-0387 (72249.90053). However, please do not include the payment of issue fees.

Respectfully submitted,

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